

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON HIGHWAYS AND TRANSPORTATION

Call to Order: By **VICE CHAIRMAN RIC HOLDEN**, on February 9, 1999
at 3:18 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Arnie Mohl, Chairman (R)
Sen. Ric Holden, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Bob DePratu (R)
Sen. John Hertel (R)
Sen. Reiny Jabs (R)
Sen. Greg Jergeson (D)
Sen. Glenn Roush (D)
Sen. Debbie Shea (D)
Sen. Spook Stang (D)

Members Excused: Sen. Daryl Toews (R)

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Phoebe Olson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 330 SB 333 SB 374 SB 346,
2/7/1999
Executive Action: None

HEARING ON SB 374

Sponsor:

SENATOR J.D. LYNCH, SD 19, Butte

Proponents:

**Frank Crowley, MT Solid Waste Contractors
Steve McGree**

Opponents:

**Dave Galt, MT Department of Transportation
Brian Cavey, MT Motor Carriers Association**

Opening Statement by Sponsor:

SENATOR J.D. LYNCH, SD 19, Butte, thanked the Department for helping him to make the bill better. He said the bill in no way threatened federal laws or federal funds. He explained that the garbage haulers were having trouble at the weight station. He explained that this bill raised the tolerance from 7% to 10%. He said this would solve the small business problems. He didn't think that 10% was asking too much.

Proponents' Testimony:

Frank Crowley, MT Solid Waste Contractors, said he was in support of the bill and he read a letter from City-County Sanitation, INC. **EXHIBIT(his32a01)**

Steve McGree, Butte, said he had urged **SENATOR LYNCH**, to bring forth the bill. He contended it was truly a guessing game as how heavy a truck could get. He said the increased tolerance would allow them to meet the bridge requirement and cut down on the amount of tickets they were receiving.

Opponents' Testimony:

Dave Galt, MT Department of Transportation, submitted written testimony. **EXHIBIT(his32a02)**

Brian Cavey, MT Motor Carriers Association, said he believed this bill was the wrong way to address the issue. He believed that it would be appropriate to go back to look at the weight limits that are included in statute and if revisions are needed make them in

that order. He encouraged the committee to look at the bill very carefully. And urged a Do Not Pass.

Questions from Committee Members and Responses:

SENATOR BARRY "SPOOK" STANG, asked Dave Galt if when he did his study of Solid Waste people around the state how many would be hauling 25 miles or more.

Dave Galt, said he did not conduct a study.

SENATOR STANG, asked if the amendment allowed for 25 miles from their base of operations or the last pick up point.

Dave Galt, said that he would perceive it to be 25 miles from the base of operations, or 25 miles from the dump.

SENATOR STANG, said as long as they were picked up within 25 miles from the landfill they would be OK.

Dave Galt, said that was correct.

SENATOR STANG, said a suggestion was made to take an over all look at the weights; he wondered when was the last time that had been done. He thought that would be better than providing exceptions.

Dave Galt, said it was difficult to change the weight limits that were in place now. He said they followed a formula prescribed by the Federal Highway Administration. He said if they reevaluated those weights they would be in violation of federal law, and would risk sanction of Federal Highway Funds.

SENATOR STANG, asked if they allowed this increase, what he perceived the damaged to the highways would be.

Dave Galt, said he believed there would be more damage.

SENATOR DEBBIE SHEA, asked Mr. Cavey, why the Motor Carriers had not introduced their own legislation.

Brian Cavey, said the issue was not brought to their attention because their members were concerned about the issue. In addressing the introduction of the bill, members said that the remainder of the statutes should be looked at as well.

SENATOR GLENN ROUSH, asked Dave Galt if all garbage trucks were rated as class D motor carriers.

Dave Galt, said that was a good question. He said that the reason that was in there was all class D carriers were regulated by the Public Service Commission and they had to have authority to haul household refuse.

Closing by Sponsor:

SENATOR LYNCH, thanked the committee. He was upset that the Motor Carriers had opposed the bill instead of talking with him about amendments. He maintained this was a small businessman's bill. He alleged that his would not hurt anyone, but it would help another small business out. He complemented Dave Galt for his civility. He believed it was the legislature's job to help small business.

HEARING ON SB 346

Sponsor:

SENATOR DON HARGROVE, SD 16, Belgrade

Proponents:

Bob Turner, MT Department of Transportation
Ronna Alexander, MT Petroleum Marketers

Opponents: none

Opening Statement by Sponsor:

SENATOR DON HARGROVE, SD 16, Belgrade , said this bill would require the fuel pumps dispensing dyed fuel to be identified. He said actually federal law already required that it be identified. This just required that a Department decal be put on the pump, that said dyed fuel could only be used for off-road use. He asserted this allowed standardization, and would prevent people from making mistakes. He submitted an amendment.

EXHIBIT (his32a03)

Proponents' Testimony:

Bob Turner, MT Department of Transportation, reiterated that this would provide standardization for marking dyed diesel fuel pumps. He said the Department would absorb the cost of the decals to send to the retailers to put on the pumps. He also believed this would help to educate the public and reduce liability for retailers.

Ronna Alexander, MT Petroleum Marketers, said the current membership based of her organization represented 70% of the retail fueling locations in the state of Montana. She said the bill was a reasonable responsibility for the industry to assume. She said a survey had been sent out last summer and this idea was supported 10 to 1. She was concerned about which penalty section this bill would be codified to. She suggested asking the Department for advice on that. She hoped the committee would support the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR REINY JABS, asked where the pumps were for dyed fuel.

Bob Turner, said there were quite a few around the state. He added that he believed the penalties should be addressed in Title 15, chapter 70, that allowed the maximum fine to be \$100.

Closing by Sponsor:

SENATOR HARGROVE, said it was not a big deal, but he thought it was important. He said the amendment was requested by the committee and they could treat it how they wanted. He thought Bob Turner's idea about the penalty was good. He thanked the committee for the hearing.

HEARING ON SB 333

Sponsor: SENATOR CHUCK SWYSGOOD, SD 17, DILLON

Proponents:

Jim Currie, MT Department of Transportation
Vern Peterson, MACO
Sam Ganfrancisco, MACRS
Glenna Ode, Jeferson County Commisioner
Tim Burton, Lewis and Clark County
Bill Kennedy, Yellowstone County
James Kembel, MT Technical Counsel

Opponents: None

Opening Statement by Sponsor:

SENATOR CHUCK SWYSGOOD, SD 17, Dillon, said SB 333 revised the paved secondary road program. He added that basically the bill was explained on page 1 lines 18 through 21. He deferred further comments to the proponents and reserved the right to close.

Proponents' Testimony:

Jim Currie, submitted written testimony, **EXHIBIT(his32a04)**

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Vern Peterson, MACO, spoke in favor of the bill. He said the SOS program was a short term fix, and a major problem would arise now that program was over. He believed this bill was the solution to the problem. He said the biggest concern to the commissioners was the loss of their individual county appropriation. He thought that was resolved with the selection process in the districts, and everyone would receive more money. He claimed this was a real good bill and made himself available for questions.

Sam Geanfrancisco, Montana Association of County Road Supervisors, said they thought this was a great bill. He thought that the traveling public would see greater service and the roads would be in much better shape than they are today. He urged the committee to support the bill.

Glenna Ode, Jefferson County Commissioner, she thanked the sponsor for bringing forth the bill. She said the Montana Association of Counties urged a do pass recommendation.

Tim Burton, Lewis and Clark County, said the present secondary road program had problems, and this proposal would allow the program to run much more smoothly. He saw this as a positive partnership with the State of Montana and felt that all sides had come together on this proposal. He stood in support of the bill.

Bill Kennedy, Yellowstone County Commissioner, felt this had been a long time coming. He said they had worked with Department for many months to work out something that all the counties could live with. He said this was a good compromise, and work for everyone. He maintained that it would help the counties as well as the state.

Jim Campell, Montana Technical Council, went on record in support of the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR JABS, asked if the state would take over the snow plowing too.

Jim Currie, said the intent was to sit down with each county and work out agreements with them.

SENATOR HERTEL, wanted to know if the counties would have to meet certain specifications in regard to bridges.

Jim Currie, said the bridges would have to meet national standards. He said right now bridges don't figure in to the allocation formula, yet they are eligible for federal funding.

SENATOR MOHL, asked if this would allow the use of federal matching money.

Jim Currie, said yes it would.

SENATOR MOHL, said then theoretically this would allow the state to do more secondary work for the counties.

Jim Currie, said if they wanted to allocate more state dollars toward the secondary system that could be done. He maintained there was a limited amount of federal aid secondary dollars, but theoretically that was true.

SENATOR MOHL, he said according to the fiscal note they should be able to do a lot more work.

Jim Currie, said that was correct.

SENATOR COLE, asked if there were any figures to say how much money would be put on the secondary roads under this program.

Jim Currie, said they were somewhere around 30 or 31 million dollars.

SENATOR COLE, asked what the funding would be without this program.

Jim Currie, said whether this went or not they had made the commitment to increase the secondary roads program by 60%.

SENATOR COLE, said as he understood it, this only applied to paved secondary roads.

Jim Currie, with regard to maintenance it only applied to secondary roads, with regard to capitol improvement it also pertained to gravel secondaries.

SENATOR COLE, asked if they had anything that would show the secondary paved roads on the map.

John Blacker, said he would get that information.

SENATOR COLE, inquired about the remark made about splitting up district four.

Bill Kennedy, said some commissioners had talked about splitting it evenly so the commissioners in the southern district wouldn't have as far to go to look at those roads. He said it had just been talked about, but the counties could get together and vote on that.

SENATOR DEPRATU, asked how many dollars from a county standpoint this would free up to use on good old county roads.

Vern Peterson, said there were no figures on that. He said it would vary tremendously amongst counties.

SENATOR HOLDEN, asked on page 2 line 16 and 17 what was the rationale behind the value of rural lands.

Pat Saindon, said at the time the old language was enacted a lot of secondary roads were being built, so there was some rationale as to allocating money based on land value because they were going to have to acquire the land in order to build the roads.

SENATOR HOLDEN, said on page 3 line 25, it talked about two votes for the Department and one vote for the County Commissioners. He wondered how they arrived at that breakdown.

Jim Currie, said, of course, there was one vote per county, and the district administrator would have a vote because he was responsible for everything in the transportation district. Also two for the secondary road engineer who works with all the counties and helps with the secondary program.

SENATOR SWYSGOOD, said he agreed with the breakdown.

Vern Peterson, explained that every county was allowed one vote. It wasn't 2 to 1, it was more like 13 to 2. He agreed with the breakdown also.

Closing by Sponsor:

SENATOR SWYSGOOD, said since he had served in the legislature there had been attempts by counties to get the state to take over county roads because of their heavy use. He believed this bill was a good agreement. He thought it had positives for everyone involved and the counties would benefit. He thanked the committee for the hearing and said he would appreciate their consideration on the bill.

HEARING ON SB 339

Sponsor: **SENATOR ARNIE MOHL, SD 39, Kalispell**

Proponents:

Mike Foster, MT Contractors Association
Ed Maronick, Maronick Construction
Mitch Leslie, Quality Concrete
Joel Long, JTL Group

Opponents:

Mick Robinson, Governors Office
Janice Brown, FHWA

Opening Statement by Sponsor:

SENATOR ARNIE MOHL, SD 39, Kalispell, explained the reason for this bill was fairness. He maintained that trucks were coming into Montana loaded and leaving empty. He contended the government had provided free trade for every country but the United States. He maintained that this bill would eliminate that problem. He reminded everyone that this bill was about fairness. There was nothing in his bill that said other countries couldn't come here and bid, it just allowed our contractors the same privileges in their countries. He pointed out the fact that the Governor was campaigning for jobs and income. He didn't believe the intent was to create jobs for out of country contractors but for Montanans. He said the point of the bill was not to eliminate anyone from the bidding process, it just said if they were allowed to bid in our country then we would be able to do the same in their country. He insisted that if this bill caused the loss of federal dollars, it would be rendered void. He maintained that this was a good piece of legislation that allowed for fairness and equality.

Proponents' Testimony:

Mike Foster, MT Contractors Association, believed that the sponsor had done a good job of outlining the crux of the bill. He said that everyone had heard about free trade through NAFTA or GAT, and other federal programs. He contended that their emphasis was always free trade, this was about fair trade. He thought that statement would be true for any industry in Montana. He conveyed that they did not mind competition, but they asked for a fair shot on both sides of the border. He believed the resulting reciprocity agreement would serve as the real force in providing fairness. He complemented Senator Mohl for taking an even handed approach and trying to create a fairness scenario for contractors on both sides of any border. Also, for creating a safety barrier that allowed the bill to be rendered void if indeed it was shown that federal money would be lost. He believed there should be no problems with the way the bill was set up and he asked for support on the bill.

Ed Maronick, Maronick Construction, said this was all about fairness. He conveyed that, he, as a contractor did not care if a Canadian or Mexican or any other contractor came here as long as there was a level playing field, and he could compete in their countries. He contended that this bill leveled the playing field and he thanked Senator Mohl for bringing the bill.

{Tape : 2; Side : B; Approx. Time Counter : 440; Comments : switch to tape 2}

Mitch Leslie, Quality Concrete, said they had tried twice to do work in Canada but were unsuccessful. He said that he didn't mind them coming down here and bidding on jobs, but he wanted to be able to do the same there. Fair is Fair was his contention.

Joel Long, JTL Group, said he was in support of the bill. He appreciated the effort to level the playing field. He emphasized the importance of fair trade when there was free trade.

Opponents' Testimony:

Mick Robinson, Governors Office, said he was partly an opponent and partly informational, or as he called himself a noproponent. He said they understood the situation because they had been involved in the agricultural issues. He acknowledged there was a lot of work to be done in terms of trade with other countries. In his opinion this was the wrong approach, in terms of getting something constructive done. He referred to a previous discussion with Senator Mohl on another piece of legislation, SB 356 dealing with adding a Reservation Resident to the Highway Commission. He said the purpose behind that particular legislation and the discussion was to try to get into some better communication

between this Indian nation or other country, and the Montana Department of Transportation. He said that particular approach better served the interests of all that were connected with these particular issues. He said it was important to keep in mind that this particular bill, although it dealt in title 60 with contractor bids etc., that title 18 dealt with all state contracts. He believed they were impacting all government contracts with foreign countries, other states etc. and that there was a lot of business that took place outside of Montana. He believed it was much broader than just dealing with the Highway contract issue.

They had some discussions with the Federal Trade office that produced confirmation that indeed the Province of Alberta had entered into an excess of 10 million dollars in contracts that they were aware of in terms of their dealing with these issues with non Canadian firms. He thought the issues needed to be addressed through the mechanisms at the federal level in terms of trying to deal with those issues. He said he did have a copy of the letter sent to Janice Brown, and he referenced that it seemed very clear there would be an impact on federal funding as a result of this type of preference being included in Montana law. He recognized the contingency avoidance provision in the bill, but said the Governor worried about what kind of message was being sent. He reiterated that another approach besides this particular bill, was the right way to address the need for Montana to do business outside the state.

Janice Brown, Federal Highway Administration, said she was not necessarily an opponent to the bill, but simply wanted to provide information and limit her remarks to the impacts that the proposed legislation could have on the Federal Aid Program in Montana. She referenced the letter she handed out.

EXHIBIT (his32a05) She maintained that when the Transportation Commission met in December they considered the award of a contract to a Canadian firm, the apparent low bidder on a federally funded highway project. She stated during that meeting she advised the commission that should they choose not to award to the low bidder for the sole reason that it was a Canadian firm, they would be violating federal requirements and she would have no choice but to make the project ineligible for federal funds. She further advised the commission that if MDT prohibited bidding by Canadian bidders, or refused the award to an otherwise qualified responsible bidder on the basis of National origin, that in her opinion they would be jeopardizing the entire federal aid program in Montana because it would be establishing a defacto discriminatory policy. She maintained that federal regulations required non discriminatory bidding procedures regardless of national, state or local boundaries and without regard to race, color, religion, sex, national origin, or handicap. She said she

had reviewed this bill and again referenced Exhibit 5. She made herself available for questions.

Questions from the Committee:

SENATOR JABS, asked if there was a statute that said you had to give 3% preference to in-state bidders, if that applied to highway contracts.

Janice Brown, said that provision was not applied to Federal Aid contracts. It was only applied to state funded contracts.

SENATOR JABS, he said that there was an agreement with Canada that they could get their feeder cattle there, but he understood that agreement ended in March, and they could no longer get cattle there. He asked if that was correct.

Mick Robinson, said he believed that was a temporary agreement that could possibly be extended after further discussion.

SENATOR JABS, he said even though they were negotiating they were still coming out on the short end of the stick. He said they let the feed cattle up there because it was a good deal, they could feed them cheaper feed, but when they were fat they came back down here and got the fat price for them.

Mick Robinson, said these were complex issues. He said there had been progress made, but still needed much more. He was worried about effecting business that were currently doing business in Canada.

SENATOR DEPRATU, said it looked to him like the sponsor had put all kinds of escape clauses in the bill for federal projects, and he wondered why it should be a problem. He believed it was a matter of fairness and equality.

Janice Brown, said she did not disagree, but she felt it was her responsibility to advise the committee that the bill would be applied to federal aid contracts that were a big source of funding to the state.

SENATOR DEPRATU, said he understood how complicated these things could get. He said sometimes the complications fed on themselves and built and built. He said all this bill asked for was reciprocity and wondered why it was so hard to acknowledge that.

Mick Robinson, said he believed there was a lot of administrative burdens to deal with. He said he was unsure how to deal with

them, and that is why he felt it was better to deal with this issue through agreements with the Federal Trade Commission.

SENATOR DEPRATU, said there was testimony that people had tried to do business in Alberta and roadblocks were put up, preventing them from succeeding.

Mick Robinson, said he did not think this was the right approach in terms of accomplishing something.

SENATOR HERTEL, asked how many Canadian contractors have won bids in Montana in the last year or two.

Jim Currie, said he was unsure. He only knew of the one award to a Canadian contractor.

SENATOR HERTEL, asked if there was a lot of activity taking place.

Jim Currie, said they saw more out of state than out of country activity.

SENATOR MOHL, said that right now there was only one out of country contractor that was participating in the bidding process, but he felt since they were awarded a contract that would open the door for others to follow.

SENATOR ROUSH, asked if 23CFR1.36 had ever been applied in any state from a Canadian contractor.

Janice Brown, said that all the examples had dealt with foreign contractors coming into the states. She stated there were no exceptions.

SENATOR ROUSH, asked if a Canadian firm had been awarded a contract in the states if this language had been applied against the state for the violation.

Jan Brown, said she did not know of a case where it had been applied.

SENATOR COLE, asked if this bill only applied to highway contracts.

SENATOR MOHL, said that he would like to extend it to cover building contracts.

SENATOR COLE, said if that was done, would you also say that a Montana contractor could not go out of country to buy the products as well.

SENATOR MOHL, said that in his contracts now, it required him to buy American in a federal contract, and buy Montanan in State contracts.

SENATOR COLE, asked what his feelings were about losing the federal funding by going ahead with this bill.

SENATOR MOHL, said the federal funding would not be jeopardized, because of the escape clause he had added.

Janice Brown, clarified that the "buy America" provisions had been around for some time. She said they only applied to steel products.

Al Radliff, said there was a difference between buy American, and buy America. Buy America applied to the federal aid highway program and buy American applied to the direct federal or federal lands highway program. Buy America only applied to steel.

SENATOR JABS, asked if the whole bill would be killed if the federal government said the could not use it or just the federal contract killed.

SENATOR MOHL, said just that particular project would be void.

SENATOR HOLDEN, asked if they wouldn't have to prove to the Attorney General that the statute was in violation of US Codes.

Janice Brown, said they would advise the Department of Transportation that they found this bill in violation of federal requirements and would take the action indicated in the letter. She said it would be up to the Department to appeal that decision.

SENATOR HOLDEN, said they would trump us and then we would appeal that the US codes do not allow fair trade to take place between Montana citizens and the citizens of Canada.

Janice Brown, said the did not get into equity issues, they just say federal law provides for nondiscrimination.

SENATOR COLE, asked if the Federal Government said they would not provide funds if the bill would still be active for state contracts.

SENATOR MOHL, said that was correct.

SENATOR COLE, pointed out on the last page of the bill, it says this act is void on the date the director of the Department of Transportation certifies to the Governor, so on. He said that sounded like the act was void, period.

SENATOR MOHL, said he was bringing in an amendment to clarify that.

Closing by Sponsor:

SENATOR MOHL, said there were no exceptions; they could not buy anything other than American made products or the contracts were lost. He commented it was strange how different rules were made for different situations. He voiced his disappointment in the Governor's opposition. He read a letter from **SENATOR CONRAD BURNS. EXHIBIT (his32a06)**.+ He hoped the committee could find it in their hearts to do what was fair. He hoped Canada would not prosper because of our mistakes.

ADJOURNMENT

Adjournment: 5:20 P.M.

SEN. ARNIE MOHL, Chairman

PHOEBE OLSON, Secretary

AM/PO

EXHIBIT (his32aad)